Projek Lebuhraya Utara-Selatan Bhd v Permas Forwarding Agency Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO N-04–322–09 OF 2012

RAMLY ALI, DAVID WONG AND ZAWAWI SALLEH JJCA

24 JULY 2013

Statutory Interpretation — Construction of statute — Intention of Parliament — Federal Roads (Private Management) Act 1984 — Whether Act intended to make only users of highway liable to pay tolls — Whether Act did not intend to make owners of vehicles liable if others who used their vehicles failed to pay tolls — Whether common law principle of vicarious liability could not be imported into Act to make owners of vehicles liable

The issue in this appeal was whether an employer was vicariously liable for the non-payment of road tolls by its employees. The appellant was the concessionaire of the North-South Expressway and was authorised to collect tolls from users of the highway. The respondent's employees had used the Expressway without paying toll amounting to a substantial sum. The magistrate's court allowed the appellant's claim to recover that sum from the respondent based on the principle of vicarious liability and also based on s 8(2) of the Federal Roads (Private Management) Act 1984 ('the Act'). On appeal, the High Court reversed the decision holding that s 8(2) of the Act did not intend to make owners of vehicles liable for tolls not paid by others who had used those vehicles and that the principle of vicarious liability could not be applied as it was not proved that the respondent had authorised its employees not to pay the tolls.

Held, dismissing the appeal with costs of RM5,000:

(1) Section 2 of the Act in its natural meaning empowered the concessionaire (the appellant) to levy tolls only on persons who used the roads. The duty to pay was affixed only on users of the roads. There were no express words in the Act to evince any intention to make registered owners of vehicles liable for the unlawful acts of their employees or agents. It would be improper to infer such intention as that would give rise to an unreasonable and unjust legislation and contravene the general presumption against the legislating of unfair laws (see paras 11 & 15).

(2) If the Legislature had wanted to affix statutory liability on owners of vehicles using the roads, clearer words would have been used in the Act. To interpret the word 'user' to include the registered owners would have

great ramification to the public at large as all registered owners would be liable for debts incurred by the drivers of those vehicles whose acts the owners did not authorise or were unaware of. That would lead to inconvenience, injustice, absurdity or unreasonableness. In construing any legislation the general presumption was that the Legislature's intent was to avoid such consequences (see paras 12–13).

(3) The instant case was concerned with breach of a statutory liability. As such, the common law principle of vicarious liability could not be imported into an area of law covered by statute. Only clear words within the legislation itself could affix liability on the respondent (see para 16).

[Bahasa Malaysia summary

Isu dalam rayuan ini adalah sama ada majikan bertanggungjawab secara vikarius kerana tol-tol jalan yang tidak dibayar oleh pekerja-pekerjanya. Perayu adalah pemegang konsesi Lebuhraya Utara-Selatan dan telah diberi kuasa untuk mengutip tol-tol daripada pengguna-pengguna jalan raya. Pekerja-pekerja responden telah menggunakan Lebuhraya itu tanpa membayar tol yang besar jumlahnya. Mahkamah majistret telah membenarkan tuntutan perayu untuk mendapat balik jumlah tersebut daripada responden berdasarkan prinsip liabiliti vikarius dan juga berdasarkan s 8(2) Akta Jalan-Jalan Persekutuan (Pengurusan Persendirian) 1984 ('Akta tersebut'). Atas rayuan, Mahkamah Tinggi telah mengakas keputusan di mana s 8(2) Akta tersebut tidak berniat untuk menjadikan pemilik-pemilik kenderaan-kenderaan bertanggungjawab bagi tol-tol yang tidak dibayar oleh orang lain yang telah menggunakan kenderaan tersebut dan bahawa prinsip liabiliti vikarius tidak boleh terpakai kerana tidak dibuktikan bahawa responden telah memberi kuasa kepada pekerja-pekerjanya untuk tidak membayar tol-tol tersebut.

Diputuskan, menolak rayuan dengan kos sebanyak RM5,000:

(1) Seksyen 2 Akta tersebut dalam maksud semula jadinya memberi kuasa kepada pemegang konsesi (perayu) untuk mengenakan tol-tol ke atas orang-orang yang menggunakan jalan raya tersebut. Kewajipan untuk membayar ditetapkan hanya kepada penguna-pengguna jalan raya tersebut. Tiada perkataan nyata dalam Akta tersebut yang memperlihatkan apa-apa niat untuk menyebabkan pengguna-pengguna berdaftar kenderaan-kenderaan bertanggungjawab kerana tindakan pekerja-pekerja atau ejen-ejen mereka yang menyalahi undang-undang. Adalah tidak wajar untuk membuat kesimpulan tentang niat sedemikian kerana ia akan menimbulkan perundangan yang tidak munasabah dan tidak adil dan bertentangan dengan andaian am terhadap penggubalan undang-undang yang tidak adil (lihat perenggan 11 & 15).

(2) Jika badan perundangan mahukan liabiliti statutori tetap ke atas pemilik-pemilik kenderaan-kenderaan yang menggunakan jalan raya

tersebut, perkataan-perkataan yang lebih jelas patut digunakan dalam Akta tersebut. Bagi mentafsir perkataan 'user' sebagai termasuklah pemilik-pemilik berdaftar memberi kesan besar kepada pihak awam kerana semua pemilik-pemilik berdaftar akan bertanggungjawab untuk hutang yang ditanggung oleh pemandu-pemandu kenderaan-kenderaan tersebut yang mana tindakan-tindakan tersebut tidak diberi kuasa oleh atau disedari oleh pemilik-pemilik itu. Ia membawa kepada kesulitan, ketidakadilan, kemustahilan atau tidak munasabah. Dalam mentafsirkan apa-apa perundangan andaian am adalah bahawa niat badan perundangan adalah untuk mengelak daripada akibat sedemikian (lihat perenggan 12–13).

(3) Kes ini adalah berkenaan pelanggaran liabiliti statutori. Oleh itu, prinsip liabiliti vikarius di bawah *common law* tidak boleh terpakai dalam bidang undang-undang yang terangkum di bawah statut. Hanya perkataan yang jelas dalam perundangan sendiri boleh menentukan laibiliti ke atas responden (lihat perenggan 16).]

Notes

For cases on intention of Parliament, see *Mallal's Digest* (4th Ed, 2013 Reissue) paras 1841–1843.

Cases referred to

Canada Sugar Refining Co Ltd v R [1898] AC 735, PC (refd)
Hollis v Vabu Pty Ltd (2001) 207 CLR 21, HC (distd)
Mangin v Inland Revenue Commissioner [1971] 1 All ER 179, PC (refd)
Reg v The Judge of the City of London Court [1892] 1 QB 273, CA (refd)
Vacher & Sons, Ltd v London Society of Compositors [1913] AC 107, HL (refd)

Legislation referred to

Criminal Procedure Code s 173A
Federal Roads (Private Management) Act 1984 ss 2, 8(1), (2)

Appeal from: Civil Appeal No 11(B)-6 of 2011 (High Court, Seremban)

Mathew Thomas Phillip (T Thiru with him) (Sivamohan Rajendran & Co) for the appellant.
Harpal Singh K Pasupathy (Reny Rao with him) (AJ Ariffin, Yeo & Harpal) for the respondent.

David Wong JCA:

INTRODUCTION

[1] This appeal raises a short and interesting point of law and that is whether an employer is vicariously liable for non-payment of road tolls in the context of s 8(2) of the Federal Roads (Private Management) Act 1984.

BACKGROUND FACTS

[2] The factual matrix upon which the issue of law arises is this. The respondent was sued by the appellant in respect of unpaid tolls amounting to RM19,654 in the magistrate's court. The appellant is granted a concession to construct and maintain the North-South Expressways and is also authorised to collect tolls from users of the Expressways. It is undisputed that the employees had used the Expressways and through their usage avoided and failed to pay the relevant tolls payment amounting to RM18,654.

[3] The appellant succeeded in their claim before the magistrate's court. However on appeal to the High Court, the magistrate's court's decision was reversed and it is the High Court decision which is the subject of this appeal.

MAGISTRATE'S COURT'S REASONS

[4] The learned magistrate found that the respondent was responsible for the act of their employees premised on s 8(2) of the Federal Roads (Private Management) Act 1984 and the principle of vicarious liability.

HIGH COURT DECISION

[5] The High Court reversed the decision of the magistrate's court on the following grounds:

(a) it is not the intention of s 8(2) of the Federal Roads (Private Management) Act 1984 to affix liability on the owners of vehicles for tolls not paid by the drivers using the highways;

(b) the principle of vicarious liability is not applicable in this matter as there is no proof that the respondent had authorised its employees not to pay the tolls.

A OUR GROUNDS OF DECISION

[6] The issue as set out in the opening paragraph calls upon us to interpret s 8(2) of the Federal Roads (Private Management) Act 1984 in the context of the Act itself.

B

[7] It is trite law that a statute should be read as a whole. What that means is simply that each clause in a statute is to be 'construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute' (see per Lord Davey in *Canada Sugar Refining Co Ltd v R* [1898] AC 735 at p 741).

C

[8] In our view the relevant provisions of the Federal Roads (Private Management) Act 1984 are these:

D

Section 2(1)

It shall be lawful for the Minister responsible for works by order published in the *Gazette* to authorise any person who has agreed to construct, re-construct, upgrade, repair or maintain any road, bridge or ferry which has been declared or is to be declared a Federal road, bridge or ferry under the Federal Roads Ordinance 1959 or which is in any Federal Territory to demand, collect and retain tolls for such period as may be specified in the order for the use of such road, bridge or ferry by any person or class of vehicles.

E

F *Section 8(1) and (2)*

(1) Any person who uses or attempts to use any road, bridge or ferry in respect of which an order under s 2 has been made without payment of the tolls prescribed in the order shall be guilty of an offence and shall, on conviction, be punished with a fine of not less than two thousand ringgit and not more than five thousand ringgit.

G

(2) Notwithstanding sub-s (1) tolls due and payable by virtue of an order made pursuant to s 2 may be recoverable by action at law by the person so authorised under the said section.

H

(3) Section 173A of the Criminal Procedure Code shall not apply in respect of an offence under sub-s (1).

(4) In every case in which the offender is sentenced to pay the fine under this section the court passing the sentence shall direct that in default of payment of the fine the offender shall be imprisoned for a period not exceeding one year, which imprisonment shall be in excess of any other imprisonment to which he may be sentenced or to which he may be liable under a commutation of sentence.

I

[9] Section 8(2) is a section which empowers the appellant to recover the

unpaid tolls by way of a civil action irrespective of any criminal proceeding which may be brought against the person using the road. In another word, this section exists independent of s 8(1) which empowers the relevant authority to charge the person who had used the road and failed the relevant tolls.

[10] Hence we are not in agreement with the contention of learned counsel for the respondent when he submitted that to affix liability of the respondent would amount to making the respondent criminally liable for the acts of its employee. It is of course trite law that prima facie a master cannot be made criminally liable for acts of its servants.

[11] Be that as it may, we agree with contention of learned counsel for the respondent that whether the respondent should be responsible for the unpaid tolls, regard must be given to the wordings of the provisions set out above. Section 8(2) is the primary provision and it makes mention of an order made pursuant to s 2. Reading s 2 in its natural meaning, there is little doubt in our mind that the concessioners (in this case the appellant) are empowered only to levy tolls on person who uses such road or in other words, the duty to pay is affixed on the users of the roads.

[12] It is also our view that had the Legislature wanted to affix statutory liability on owners of vehicles using the roads, clearer words would have used and that can be done by easily defining the word 'user' to include the registered owners of the vehicles. Further since there may be criminal element ramifications if we were to interpret the word 'user' to include the registered owner, we decline the invitation of learned counsel for the appellant to adopt his interpretation.

[13] Further to accede to the interpretation advanced by the appellant would have great ramification to the public at large as all registered owners would be liable for debts incurred by the drivers of the vehicles which acts they had not authorised or aware of. That by any definition would lead to inconvenience, injustice, absurdity or unreasonableness. In construing any legislation, the general presumption is that Legislature's intent is to ensure legislations enacted by them avoid such consequences, (see *Mangin v Inland Revenue Commissioner* [1971] 1 All ER 179).

[14] Another instructive case is that *Vacher & Sons, Ltd v London Society of Compositors* [1913] AC 107 where Lord Atkinson in the House of Lords said this:

> It is no doubt well established that, in construing the words of a statute susceptible of more than one meaning, it is legitimate to consider the consequences which would result from any particular construction, for, as there are many things which the Legislature is presumed not to have intended to bring about, a construction

> which would not lead to any one of these things should be preferred to one which would lead to one or more of them. But, as Lord Halsbury laid down in *Cooke v Charles A Vogeler Co* [1901] AC 102 at p 107, a Court of law has nothing to do with the reasonableness or unreasonableness of a provision of a statute, except so far as it may help it in interpreting what the Legislature has said. If the language of a statute be plain, admitting of only one meaning, the Legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd or mischievous results. If the language of this sub-section be not controlled by some of the other provisions of the statute, it must, since its language is plain and unambiguous, be enforced, and your Lordships' House sitting judicially is not concerned with the question whether the policy it embodies is wise or unwise, or whether it leads to consequences just or unjust, beneficial or mischievous.

Lord Esher in *Reg v The Judge of the City of London Court* [1892] 1 QB 273 at p 290 states the principle thus:

> If the words of an Act are clear, you must follow them, even though they lead to a manifest absurdity. The Court has nothing to do with the question whether the Legislature has committed an absurdity. In my opinion, the rule has always been this — if the words of an Act admit of two interpretations, then they are not clear; and if one interpretation leads to an absurdity, and the other does not, the court will conclude that the Legislature did not intend to lead to an absurdity, and will adopt the other interpretation. So that if in this case the words in this section are plain and are not controlled by other portions of the statute, the contention that to interpret them according to their natural and ordinary meaning would result in placing trade unions above the law is, for the purposes of the judicial decision of this case, entirely irrelevant. We have nothing to do with it. I think the language is plain, and therefore abstain from expressing any opinion on the character of the enactment or the results it will bring about.

[15] In our present appeal, there are of course no express words in the Federal Roads (Private Management) Act 1984 evincing any intention to make registered owners of vehicles liable for unlawful acts of their employees or agents. Hence it would be improper to infer that intention as proposed by the appellant when that interpretation would give rise to an unreasonable and unjust legislation which would contravene the general presumption against legislating unfair laws.

[16] Learned counsel for the appellant in his submission places much emphasis on the principle of vicarious liability and urges us to apply it in the context of the circumstances before us. Learned counsel also referred us to the case of *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21, a decision of the High Court of Australia. We have read the judgment and are of the view that it is distinguishable as it related to a breach of a tortious liability (negligence) by the employee. Unlike in this appeal we are concerned with breach of a statutory liability and as such the common law principle of vicarious liability cannot be

imported into an area of law which is covered by a statute. As pointed out earlier, only clear words within the legislation itself can affix liability on the respondent.

[17] Finally our interpretation set out above would not breach one of canons of construction of legislation and that is to ensure that all the provisions in the Act as a whole are consistent to each other.

CONCLUSION

[18] For reasons stated above, we dismissed the appeal with costs of RM5,000 to the respondent and ordered that the deposit to be refunded to the appellant.

Appeal dismissed with costs of RM5,000.

Reported by Ashok Kumar